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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 863

JOHN HALUS, *Petitioner*

v.

EMORY M. JONES, SR., *Respondent*

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT, EMORY JONES, SR. IN OPPOSITION

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OPINION BELOW

The opinion of the Circuit Court of Appeals is not yet reported, but is set forth correctly in the Appendix to the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

The question presented is whether the United States Court of Appeals for the District of Columbia Circuit correctly reversed the judgment for Plaintiff in the District Court.

STATUTE INVOLVED

The statute has been stated by Petitioner.

COUNTER STATEMENT

Emory M. Jones, Sr. owned an automobile and he consented to its use on October 7, 1957 by his son, Emory M. Jones, Jr.. On that date, in the District of Columbia, one Eugene Griffin, a stranger to respondent, drove the car recklessly and collided with Petitioner Halun. Jones Jr. was a passenger in the back seat.

Respondent, his wife and son, testified without contradiction that Jones, Sr. repeatedly forbade the son to allow anyone else to drive the car. On the night of the accident, the son drove to Boonestown, Maryland, with Griffin and three girls as passengers. On the way back to Washington, the son stopped the car at a filling station and got out. Griffin got into the driver's seat. The son told him to get in the back seat. At the time Emory M. Jones, Jr. was nineteen (19) years old and weighed one hundred thirty-eight (138) pounds. Eugene Griffin was twenty-one (21) or twenty-two (22) years old and weighed one hundred seventy pounds (170). Griffin said he wanted to drive. The son said, "No, I cannot do that. This car is not mine." His testimony continued. "S[illegible] turn we had a few words right there and the fellow that owned the gas station, he got impatient because the car was blocking his driveway and . . . he told us to move on. Seeing that I

couldn't persuade Eugene to get from under the wheel, I just sat in the back seat and told him, said 'Look the car is new and it's not mine so don't drive is over thirty (30) miles an hour.'" Griffin was driving at about seventy (70) miles an hour when the car struck the one Petitioner was driving. Respondent's son had told Griffin to stop and had tried to grab the keys. All this is uncontradicted.

The trial court ruled as a matter of law that Griffin was operating the car with the owner's implied consent. The case went to the jury only on damages. The United States Court of Appeals for the District of Columbia reversed, entering judgment for the owner. The court stated,

> "Whether the man to whom the defendant had entrusted his car was willing or unwilling that Griffin drive it is immaterial. In *Conrad* v. *Porter* (supra), which we affirmed, the defendant's truck driver, whom Defendant had forbidden to let anyone else drive his truck, voluntarily lent it to a third person who negligently collided with plaintiff's car. The Municipal Court of Appeals not only reversed a judgment for the plaintiff, but directed entry of a judgment for defendant. The Court said that since uncontradicted testimony showed the truck driver had 'been ordered not to allow any third person to drive it, we cannot escape the conclusion that the man who was driving his truck at the time of the accident was not doing so with the express or implied consent of the owner. So driving he was not the agent of the owner and the owner was not responsible.'"

ARGUMENT

No sound reason is offered by Petitioners for the granting of a Writ of Certiorari. Reliance is not placed upon any ground enumerated in Rule 19(b) of this Court. The decision below was predicated upon an interpretation of the common and statutory law of the District of Columbia.

In 1933, the District of Columbia rejected the principle commonly referred to as the "family purpose doctrine," *Turoff* v. *Burch*, 60 App. D.C. 221, 50 F. 2d 986. Title 40, Section 424 of the District of Columbia Code, (supra) has been in effect in this jurisdiction since 1935 and as evidenced by the opinion in the instant case, set out in Petitioner's brief, the Courts have had ample opportunity to interpret the statute. The statute creates a rebuttable presumption that the driver of a car involved in an accident had the owner's consent to drive. However, when substantial evidence of non-consent is introduced the presumption ceases to operate. *Rosenberg* v. *Murray*, 73 App. D.C. 67, 116 F. 2d 552; *Hiscox* v. *Jackson*, 75 U.S. App. D.C. 293, 127 F. 2d 160; *Conrad* v. *Porter*, 79 A. 2d 777, aff'd, *Porter* v. *Conrad*, 90 U.S. App. D.C. 423, 196 F. 2d; *Hudson* v. *Lazaros*, 95 U.S. App. D.C. 16, 217 F. 2d 344.

The case at bar provides a classic example in rebuttal. Substantial evidence was offered to show that there was no consent, express or implied, to operate the vehicle. No evidence was offered by Halun to show consent. Therefore, Title 40, Section 424 of the District of Columbia Code (supra) did not apply and the Court of Appeals ruling was based on the common law doctrine of agency in this jurisdiction.

Petitioner urges that the rule enunciated in *Quock Ting* v. *United States*, 140 U.S. 417, noting exceptions to the general rule that positive testimony as to a particular fact uncontradicted by anyone should control the decision of the Court, is applicable here. In that case, a young Chinaman was seeking entry into the United States. He testified he was born in San Francisco and had spent the first ten years of his life in that city before going to China. Yet, after an absence of six years, he could not recall anything about San Francisco, could not speak a single word in English, nor could he name any person he had seen in the city. In the present case, none of the three witnesses were contradicted by facts stated by them, nor were there any inconsistencies or omissions, not only in the testimony of each, but in the testimony considered as a whole. In this case, there are no ringing gaps, no incredible testimony, therefore *Quock Ting* cannot be applied.

Petitioner next declares that the lower court completely overlooked testimony by the father-owner that the son was untrustworthy. But when asked if he had ever known his son to lie, Jones, Sr. answered, "No, sir, I have not." (J.A. 24) Additionally, Mrs. Jones testified that she trusted her son. Respondent submits that testimony which shows young Jones was not punctual on one previous occasion is not an indication that Emory Jones, Jr. was "untrustworthy."

As a final point, Petitioner urges that, "At least one other circuit has rendered a decision which conflicts with the instant case on the general legal question of liability of an owner for the negligence of his child's permittee . . . ." (P. 5 his Petition.) His authority for this statement is *Glenn Falls Indemnity Co.* v.

Zurn, 87 F. 2d. 988. That decision involved an interpretation of an insurance policy. The critical question, which the Court answered in the affirmative was whether or not the driver of an automobile, one of three school boys on a joint venture, was covered under a contract which covered any person "using" the vehicle. The father-owner testified that he did not "anticipate" driving by the other two boys, but that he had given complete control and management of the vehicle over to his son. There was no specific instruction which forbade absolutely the driving by anyone except the son. Involved in the case at bar is a statute which has been construed many times by the Courts of the District of Columbia. This statute, as has been stated, was held not to apply in the instant case. Respondent submits that an interpretation of an insurance policy in a court is not the same as a court of a particular jurisdiction ruling on the applicability of a statute peculiar to that jurisdiction. Furthermore, as substantiated by the evidence, the driver was not the "permittee" of young Jones. *Harrison* v. *Carroll*, 139 F. 2d 427, also cited by Petitioner, is distinguishable on the same grounds.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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